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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/893,590	06/29/2001	Janne Aaltonen	367.40294X00	5624

20457 7590 12/15/2005

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EXAMINER

GESESSE, TILAHUN

ART UNIT	PAPER NUMBER
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2684

DATE MAILED: 12/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/893,590	<b>Applicant(s)</b> AALTONEN ET AL.	
	<b>Examiner</b> Tilahun B. Gesesse	<b>Art Unit</b> 2684	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 September 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-41 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-41 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

1. This is in response to applicant's argument and amendment filed September 19, 2005, in which claims 1-41 are pending.

#### *Response to Arguments*

2. Applicant's arguments filed 9/19/05 have been fully considered but they are not persuasive.

On page 3 , first through third paragraph of remarks, applicant rewrite the office action , noted that the proposed combination does not disclose any description of variation of broadcast of pattern of signals from the transmitters which is responsive to a demand for specific content as recited in claim 1.

Applicant's claims 1, recites:

Kostreski teaches a broadcast system for delivering content to a terminal, (column 7, line 1-45 and figure 4), a plurality of transmitters(TX1-TX3).

Kostreski does not teach the network defines the topology of region by varying the transmission characteristics.

However, Bodin et al teaches the network defines the topology of region by varying the transmission characteristics (column 5, lines 41-46 and figure 2 reducing the size of cell by dynamically varying the entering threshold of cells). Therefore, it would have been obvious to an artisan of ordinary skill in the art at the time of the invention was made to define the topology of region by dynamically varying cell size, as

evidenced by Bodin, for the terminal to receive quality content of the transmission and avoid interference that causes by neighboring cell transmitters.

The examiner disagrees. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., variation of broadcast of pattern of signals from the transmitters which is responsive to a demand for specific content) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

The USPTO uses a different standard for construing claims than that used by district courts; during examination the USPTO must give claims their broadest reasonable interpretation.). This means that the words of the claim must be given their plain meaning unless applicant has provided a clear definition in the specification. In *re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989) (discussed below); *Chef America, Inc. v. Lamb-Weston, Inc.*, 358 F.3d 1371, 1372, 69 USPQ2d 1857 (Fed. Cir. 2004).

Kostreski teaches broadcast system with multiple transmitters (see abstract) and for similar reason as applicant's invention, which is to increase spectral efficiency, Kostreski, teaches to overcome broadcast obstructions in service area, such as mountains, buildings, trees, etc. that blocks reception from one or more transmitting sites, uses high frequency microwave portion of the spectrum, see abstract, in order to

cover large sector of the region , as shown in figure 4, item maximum area MA, which changes from small cells to larger cell "topology" , controls the by digital audio/video processor (see 125 of figure 8).

***Claim Rejections - 35 USC § 103***

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

1. Claims 1- 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kostreski et al (US patent no. 5651010) in view of Bodin et al (US patent No. 5241685).

Regarding claim 1, Kostreski discloses a broadcast system for delivering content to a terminal (abstract), including a plurality of transmitters (TX1-TX3), and a network controller (5) responsive to distribution of demand of specific content to (column 7, line 1-45 and figure 4).

Kostreski differs in teaching the network defines the topology of region by varying the transmission characteristics.

However, Bodin et al teaches the network defines the topology of region by varying the transmission characteristics (column 5, lines 41-46 and figure 2 reducing the size of cell by dynamically varying the entering threshold of cells). Therefore, it would have been obvious to an artisan of ordinary skill in the art at the time of the invention was made to define the topology of region by dynamically varying cell size, as

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evidenced by Bodin, for the terminal to receive quality content of the transmission and avoid interference that causes by neighboring cell transmitters.

As to claim 2, Kostreski discloses signaling means providing information relating to the network topology for delivery to a terminal ( column 7, lines 1-45 and figure 4).

As to claims 3-4,21-22, Kostreski differs in teaching the network defines the topology of region by varying the transmission characteristics.

However, Bodin et al teaches the network defines the topology of region by varying the transmission characteristics (column 5, lines 41-46 and figure 2 reducing the size of cell by dynamically varying the entering threshold of cells). Therefore, it would have been obvious to an artisan of ordinary skill in the art at the time of the invention was made to define the topology of region by dynamically varying cell size, as evidenced by Bodin, for the terminal to receive quality content of the transmission and avoid interference that causes by neighboring cell transmitters.

As to claim 5,24-26, Kostreski discloses transmitter-delivering content to an area overlying at least the network topology determined by the controller (figures 4 and 5).

As to claim 6,23, Kostreski discloses the network controller (5) is operable modify topology to deliver, in at least one cell , the content being delivered by the further transmitter (either using relay network or using overlap cells column 7, line 1- 45 and figures 4 and 5).

As to claim 7, 27-31 , Kostreski discloses at least two transmitters comprise the plurality of transmitters (figure 4).

As to claim 8,32-36, Kostreski discloses the transmitters characteristics are varying in respect of one transmission power (column 7, lines 1-45 and figure 5).

As to claim 9, kostreski discloses a method of delivering content to terminals over a network whose topology is defined by the transmission characteristics of a plurality of transmitters (column 7, lines1- 45 and figures4) , comprising analyzing the content to be delivered (column 7, lines1-45).

Kostreski differs in teaching the network defines the topology of region by varying the transmission characteristics.

However, Bodin et al teaches the network defines the topology of region by varying the transmission characteristics (column 5, lines 41-46 and figure 2 reducing the size of cell by dynamically varying the entering threshold of cells). Therefore, it would have been obvious to an artisan of ordinary skill in the art at the time of the invention was made to define the topology of region by dynamically varying cell size, as evidenced by Bodin, for the terminal to receive quality content of the transmission and avoid interference that causes by neighboring cell transmitters.

As to claims 10,38-40, Kostreski differs in t teaching the network defines the topology of region by varying the transmission characteristics.

However, Bodin et al teaches the network defines the topology of region by varying the transmission characteristics (column 5, lines 41-46 and figure 2 reducing the size of cell by dynamically varying the entering threshold of cells). Therefore, it would have been obvious to an artisan of ordinary skill in the art at the time of the invention was made to define the topology of region by dynamically varying cell size, as

evidenced by Bodin, for the terminal to receive quality content of the transmission and avoid interference that causes by neighboring cell transmitters.

As to claim 11 , Kostreski differs in teaching the network defines the topology of region by varying the transmission characteristics.

However, Bodin et al teaches the network defines the topology of region by varying the transmission characteristics (column 5, lines 41-46 and figure 2 reducing the size of cell by dynamically varying the entering threshold of cells). Therefore, it would have been obvious to an artisan of ordinary skill in the art at the time of the invention was made to define the topology of region by dynamically varying cell size, as evidenced by Bodin, for the terminal to receive quality content of the transmission and avoid interference that causes by neighboring cell transmitters.

As to claims 12-13, 19-20 and 41, Kostreski discloses a computer program comprising executable code for execution when Loaded on a computer, the computer is operable in accordance with the code to carry out the method according and computer readable medium (column 4, lines 1-15).

As to claims 14-18, Kostreski discloses a broadcast system (figure 4) having a plurality of transmitters (Tx1-TX3) for delivering content to terminals in respective locations each transmitter operating in accordance with a set of operational characteristics (column 7, lines 1-45) comprising: means for determining a distribution (5) of terminals for delivery of common content (see figure 4).

Kostreski differs in teaching the network defines the topology of region by varying the transmission characteristics.



However, Bodin et al teaches the network defines the topology of region by varying the transmission characteristics (column 5, lines 41-46 and figure 2 reducing the size of cell by dynamically varying the entering threshold of cells). Therefore, it would have been obvious to an artisan of ordinary skill in the art at the time of the invention was made to define the topology of region by dynamically varying cell size, as evidenced by Bodin, for the terminal to receive quality content of the transmission and avoid interference that causes by neighboring cell transmitters.

As to claims 37, Kostreski discloses the transmitter characteristics are varied such that the cellular density of the topology is increased in an area where substantially different content is being delivered to terminals (peak data usage, typical by business customers, occur in the daytime, and peak interactive video usage by residential customers occurs at night, column 7 lines 1-56 and figure 4).

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-41 have been considered but are moot in view of the new ground(s) of rejection.

### **Conclusion**

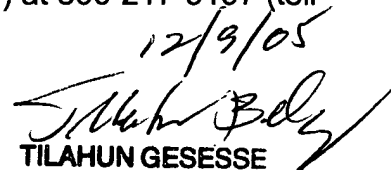
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tilahun B Gesesse whose telephone number is 571-272-7879. The examiner can normally be reached on flex.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nay Maung can be reached on 571-272-7882.

The Central FAX Number will change to 571-273-8300. This new Central FAX Number is the result of relocating the Central FAX server to the Office's Alexandria, Virginia campus.

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12/9/05  
  
TILAHUN GESESSE  
PRIMARY EXAMINER